IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12882 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

KABUDIBEN TENSINGH

Appearance:

MRS VASAVDATTA BHATT for Petitioners.

MR PH PATHAK for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 01/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Rule. Mr. P.H. Pathak, learned counsel waives

service of Rule for the respondent. Heard learned counsel. The respondent herein was working as Khalasi in Railways in Construction Division at Asarwa, Ahmedabad while her husband was also working in the Railways as Class-4 employee at Sabarmati, Ahmedabad. It is the common case of the parties that the husband of the petitioner was actually working at Surendranagar. He requested for his transfer to Ahmedabad where his wife was posted and he was accordingly transferred to Ahmedabad and placed at the bottom in the seniority list, because it was a case of his transfer from Surendranagar to Ahmedabad on his own request. Thus he sacrificed the seniority for the sake of living with his wife and family at Ahmedabad. While the husband was so posted at Ahmedabad from Surendranagar and he had already joined, the present respondent was transferred from Ahmedabad to Morbi on 20th of January 2000.

2. The respondent challenged the said transfer order dated 20th January 2000 before the Central Administrative Tribunal through O.A. No. 73/2000 wherein an interim order was passed by the C.A.T. on 4th of February 2000 that she may be permitted to proceed on leave if she so applies for the same and that it may not be insisted against her to resume her duties at Morbi. The respondent neither applied for any leave nor joined at the place of new posting and the proceedings were on before the C.A.T. and ultimately it was on 26th of September 2000 that the C.A.T. passed the impugned order whereby the transfer order had been set aside. Thereafter, the respondent had joined at Asarwa, Ahmedabad on 23rd of October 2000. Learned counsel for the petitioners while arguing the case before us in the petition has kept the challenge against the CAT's order confined to the period for which the respondent herein had not joined and did not do any work. A grievance has been raised that the Central Administrative Tribunal has ordered that the period from the date of the order of the transfer of the respondent till she was given another posting may be treated as a duty period and has also observed in operative part in paragraph 3 that the authorities could have regularised the said period.

3. Having heard learned counsel for both the parties at length, we find that sofar as the impugned order dated 26th of September 2000 passed by the Central Administrative Tribunal setting aside the transfer order is concerned, it does not suffer from any error of law nor the order can be said to be arbitrary, unjust, illegal in any manner inasmuch as the CAT has given a releif in terms of the decision taken by the Railways

Board that in case the husband and wife are employees of the Railways as far as possible they may be kept at the same place. In the facts and circumstances of the case, the CAT found that the present respondent and her husband could be kept at the same place at Ahmedabad and there was no justification so as to transfer the present respondent from Ahmedabad to Morbi after the husband had joined at Ahmedabad, and the contention as regards the construction work being over at Asarwa, Ahmedabad, was not found to be correct. Thus, the direction to set aside the transfer order dated 26th of September 2000 does not warrant any interference.

4. So far as the direction which has been given, that the period of absence, i.e., the intervening period from the date of transfer till the date of joining in the new posting, shall be treated as the duty period, it may be clarified that for the purpose of continuity in service, the entire period may be treated as on duty, but out of this whole period for the purpose of regularisation, it is open for the concerned authorities to pass appropriate orders by adjusting this period against the entitled leave due to the credit of the respondent and pass appropriate orders for rest of the period, if any, in accordance with law. This Special Civil Application is hereby dismissed with the clarification as above. Rule is hereby discharged. No order as to costs.

[M.R. Calla, J.]

rmr. [N.G. Nandi, J.]